IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11-07-2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1710 of 1996

The Madras Metropolitan
Development Authority
by its Member-Secretary .. Appellant/
2nd Defendant

Versus

1.F.C.Fakir Faizullah Bhoy

2.Corporation of Madras
rep. by its Commissioner,
Rippon Buildings,
Madras-600 003. .. Respondents./
Plaintiff and ISt
Defendant

Appeal against the judgment and decree of the Court of VI Additional City Civil Judge, Chennai, in A.S.No.226 of 1994, dated 28.07.1995, preferred against the judgment and decree of the Court of the IV Assistant City Civil Judge, Chennai, in O.S.No.7804 of 1990, dated 23.02.1993.

For Appellants : Mr.J.Ravindran

For Respondents : Mr.Mohamed Ghouse for R2

J U D G E M E N T

The Second appeal has been filed against the judgment and decree, dated 28.07.1995, made in A.S.No.226 of 1994, on the file of the VI Additional City Civil Court, Chennai, confirming the judgment and decree, dated 23.02.1993, made in O.S.No.7804 of 1990, on the file of the IV Assistant City Civil Court, Chennai.

2. The second defendant in the suit in O.S.No.7804 of 1990 is the appellant in the present second appeal. The plaintiff

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had filed the suit on the file of the IV Assistant City Civil Court, Chennai, praying for the relief of declaration and for permanent injunction to declare the demolition notice, dated 02.03.1990, issued by the second defendant as illegal, null and void and to consequently grant permanent injunction restraining the second defendant from demolishing any portion of the building in Door No.125, Old No.276, Linghi Chetty Street, Madras-600 001. The suit had been decreed by the judgment and decree of the trial Court, dated 23.02.1993, made in O.S.No.2804 of 1990. The second defendant had preferred an appeal before the VI Additional City Civil Court, Chennai, in A.S.No.226 of 1994. By its judgment and decree, dated 28.07.1995, the lower appellate Court had confirmed the judgment and decree of the trial Court, dated 23.02.1993. The Courts below had decreed the suit in favour of the plaintiff mainly on the ground that an appeal preferred by the plaintiff, under Section 79 of the Town and Country Planning Act,1971, is pending before the Secretary, Housing and Urban Development (UD.V) Department.

3. The Second Appeal has been filed by the appellant raising the following substantial questions of law:-

> "(A) Whether the Hon'ble Trial Court (or) the Lower Appellate Court, has jurisdiction to try the suit, when it is barred by the express provision of Section 101 of the Town and Country Planning Act of 1971?
>
> (B) Whether the Hon'ble learned Appellate Judge erred in coming to the conclusion that the plaintiff/1st respondent filed an appeal to the Government, had a prima facie case to declare the notice under Section 56 read with Sections 85 of the Town and Country Planning Act of 1971 as null and void and for a consequential permanent injunction against the appellant?
>
> (C) The appellant further states that the planning permission application of the 1st respondent was submitted on 03.04.1990 to regularise the unauthorised constructions but the same was examined and refused in letter No.B1/7822/90 on 18.06.1990. Then the 1st respondent preferred an appeal to the Government and the same was rejected in G.O.(D)No.71, H and U.D. Department, dated 06.02.1996?
>
> (D) Whether the ratio laid down in AIR 1991 Supreme Court page 1453 is not applicable to the facts of the present case?"

4. It is now submitted by both the learned counsels appearing on behalf of the appellant as well as the respondents

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that the said appeal has been disposed of by the Government and the aggrieved party could avail the appropriate alternate remedies available under law. In such circumstances, the learned counsels appearing on behalf of the respondents have submitted that there is no objection in allowing the present second appeal. In such circumstances, the second appeal stands allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rrg

1. The Registrar
City Civil Court, Chennai.

2. The Record Keeper
Vr Section,
High Court, Madras.

1 cc to Mr.J. Ravindran, Advocate, sr. 42572
1 cc to Mr.Mohammed Ghouse, Advocate, Sr. 41676

Second Appeal No.1710 of 1996

MDR (CO)
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